IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

Crl.Rev.Pet.No. 1073 of 2007()

CRA.281/2005 of ADDL. SESSIONS COURTS (ADHOC), MAVELIKKARA
CC.624/2003 of JUDL.MAGISTRATE OF FIRST CLASS, KAYAMKULAM

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REVN. PETITIONER: APPELLANT/ACCUSED

A.SHARAF, AGED 43 YEARS,
S/O ALIYARKUNJU, PUTHENVEETTIL,
VALLALIL KIZHAKKATHIL, KANNAMPALLY BHAGOM,
KAYAMKULAM.

BY ADV. SRI.B.RENJITHKUMAR

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. KUNJUMON, AGED 51 YEARS,
S/O ASNARUKUNJU, AL-RAYYAN, MENAMTHARA,
THEKKETHIL, KANNAMPALLY BHAGAM,
KAYAMKULAM.

BY PUBLIC PROSECUTOR
SRI.RASHEED C.NOORANAD

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 18/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 1073 OF 2007 D

Dated this the 18th day of September, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.624/2003 on the file of the J.F.C.M., Kayamkulam challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision

Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel appearing for the revision petitioner submitted that on the facts proved in this case the complaint was barred by limitation. According to the learned counsel, 18.6.03 was the date on which the postman had given intimation to the accused regarding the receipt of the statutory notice, namely, Ext.P4. But he illegally kept it for two weeks and then only informed the complainant. The date for the purpose of limitation, according to the learned counsel, is the date of giving intimation by the postman and not the date on which the complainant is subsequently informed about the fact that the notice was unclaimed. I cannot agree with the above submission. When the postal article is dispatched by the complainant, he is not in the know of things as to what transper's at the receiving hand. He is not informed about the intimation given by the postman to the addressee nor does he know that the postal article was unclaimed by the addressee. He will come to know the fact of the addressee not claiming the postal article only when that fact is conveyed to him. So understood, the complaint filed in this case

on 16.8.03 was well within the period of limitation. Moreover, this contention regarding limitation was not raised before both the courts below.

5. The learned counsel for the revision petitioner also argued that the revision petitioner had confessed his liability only with regard to the sum of Rs.90,500/- whereas the liability which is saddled on him is for an amount of Rs.3,20,000/-. The revision petitioner had admitted his signature in Ext.P1 cheque which is for a sum of Rs.3,20,000/-. But the stand taken by him was that it was offered as security in the form of a signed blank cheque. This defence was not accepted by both the courts below. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

6. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision

Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 2nd respondent complainant by way of compensation under section 357(3) Cr.P.C. a sum of Rs.3,20,000/- (Rupees three lakhs and twenty thousand only) within four months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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